

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

July 14, 2006

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: Issuance of Special Use Permit to Mid Pacific Communications,  
Inc. on Lands Encumbered by the Division of Forestry and  
Wildlife, Kawaihau District, Kaua'i, TMK: (4) 4-2-001: por.2.

APPLICANT:

Mid Pacific Communications, Inc., a Nevada Foreign Profit Corporation. whose business  
and mailing address is 3022 Peleke St. Suite One, Lihue, HI 96766.

LEGAL REFERENCE:

Sections 171-55 and 183-1.5, Hawaii Revised Statutes, as amended and Hawaii  
Administrative Rules, Section 104-20.

LOCATION:

Lihue-Koloa Forest Reserve: Portion of Government lands of Forest Reserve situated at  
Kawaihau, *Kauai*, identified by Tax Map Key: (4) 4-1-001: por. 2, as shown on the  
attached map labeled Exhibit A.

AREA:

19,200 square feet, more or less.

ZONING:

State Land Use District: Conservation/Protected Subzone  
County of Kauai CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_ NO  
  X  

CURRENT USE STATUS:

Portion of Lihue-Koloa Forest Reserve as established by Territorial Governor Frear's Proclamation on June 5, 1909.

CHARACTER OF PROPOSED USE:

Telecommunication purposes.

TERMS OF SPECIAL USE PERMIT:

See Draft Special Use Permit, Attachment "A".

CONSIDERATION:

\$750.00 / MONTH.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Existing CDUP's for the Mt. Wekiu Telecommunications site:

KA-1701	06/28/1985
KA-1701A	01/10/1992
KA-2668	03/07/1994

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on 09-08-1984 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>  X  </u>	NO <u>  </u>
Registered business name confirmed:	YES <u>  X  </u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>  X  </u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

See Draft Right-of-Entry, Attachment "A".

### REMARKS:

Mid Pacific requests a Special Use Permit for the purpose of conducting a study of power and transmission issues to determine the feasibility of using an existing, but abandoned telecommunications site to transmit and receive high capacity Ethernet digital data and voice from Mt. Wekiu to locations on Kauai. After approximately six months of study they expect to determine the adequacy of this site for their purposes. If found adequate, an outside appraisal and other required steps to develop a revocable permit or lease would be undertaken by the Division for longer-term use lease of this site.

No other parties have expressed an interest in using the site at this time. Mid Pacific will use only existing facilities now located at the Mt. Wekiu telecommunications site. They propose to replace a corroded solar panel frame and an existing solar panel with a new frame and six (6) 175-watt solar panels. Mid Pacific proposes to place dish and yagi antennas on the rooftop and/or sidewall of the existing communications shed and use the existing 14' diameter geodesic dome for solar battery and solar equipment storage. The largest dish antenna would be 4' in diameter and the smallest would be 2' in diameter. The longest yagi antenna would be 4' long with a width of 2.25". Their current proposal calls for four (4) dish antennae to be installed. All antennae would be painted dark green. Mid Pacific proposes to install radio, switching, and control equipment, as well as primary battery power, within the existing communications shed.

Mid Pacific will remove old, non-operational, or un-permitted antennae from the communications shed and contact any owners of existing equipment that appears to be in use to propose that the owner(s) of such equipment contact DOFAW to discuss co-location at the site. Mid Pacific will use the existing helipad for site access, which will be regulated under a separate Forest Reserve Special Use Permit.

### RECOMMENDATIONS:

That the Board, subject to the Applicant fulfilling the Applicant Requirements stated in the Special Use Permit, authorize the issuance of a Right-of-Entry Permit to Mid Pacific Communications, Inc. covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

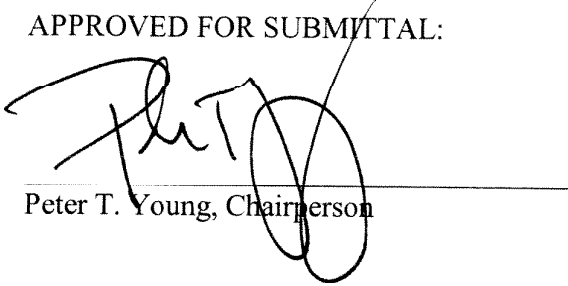
1. The standard terms and conditions of the attached draft Right-of-Entry permit form; and
2. Review and approval by the Department of the Attorney General;

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul J. Conry".

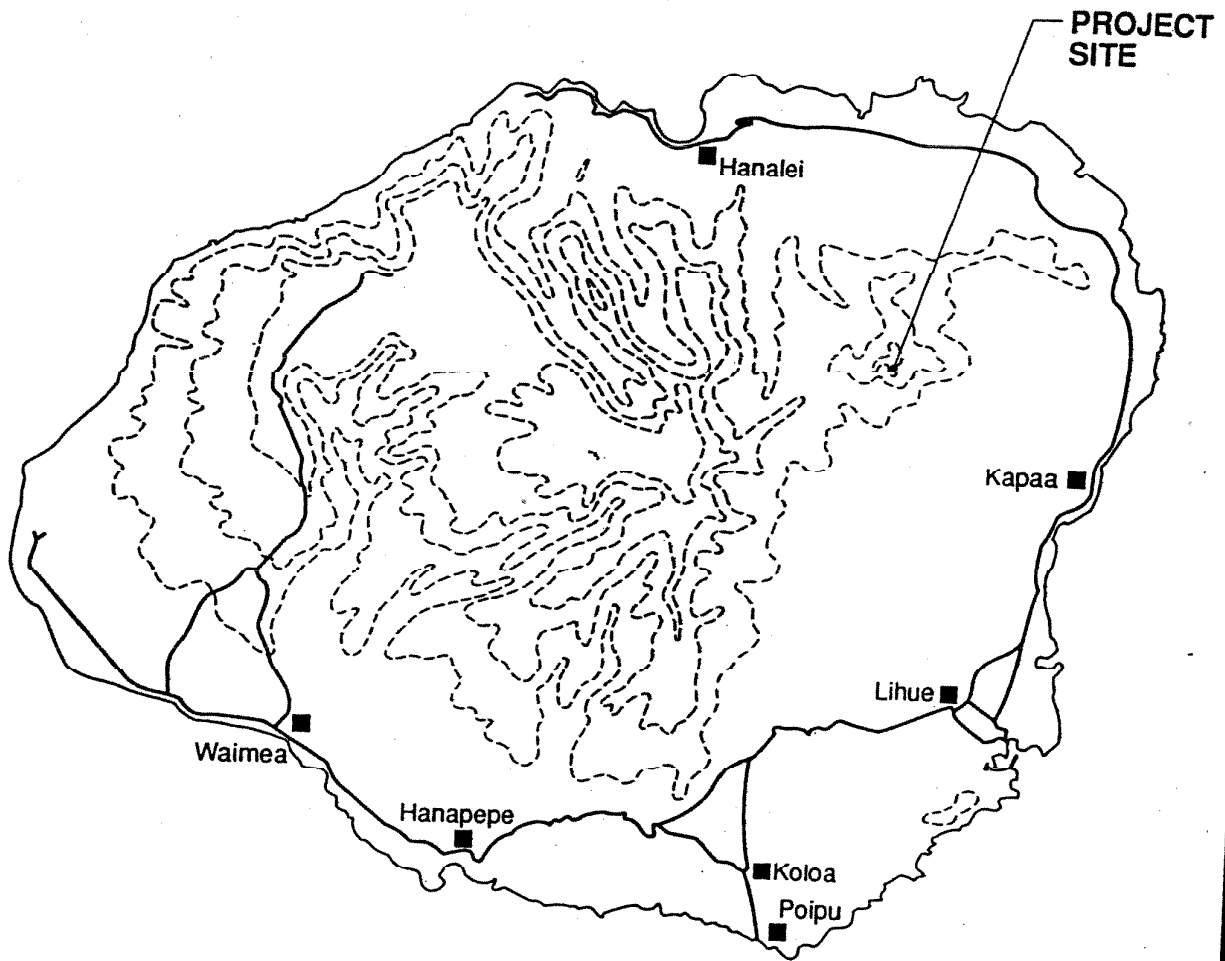
PAUL J. CONRY, Administrator

APPROVED FOR SUBMITTAL:

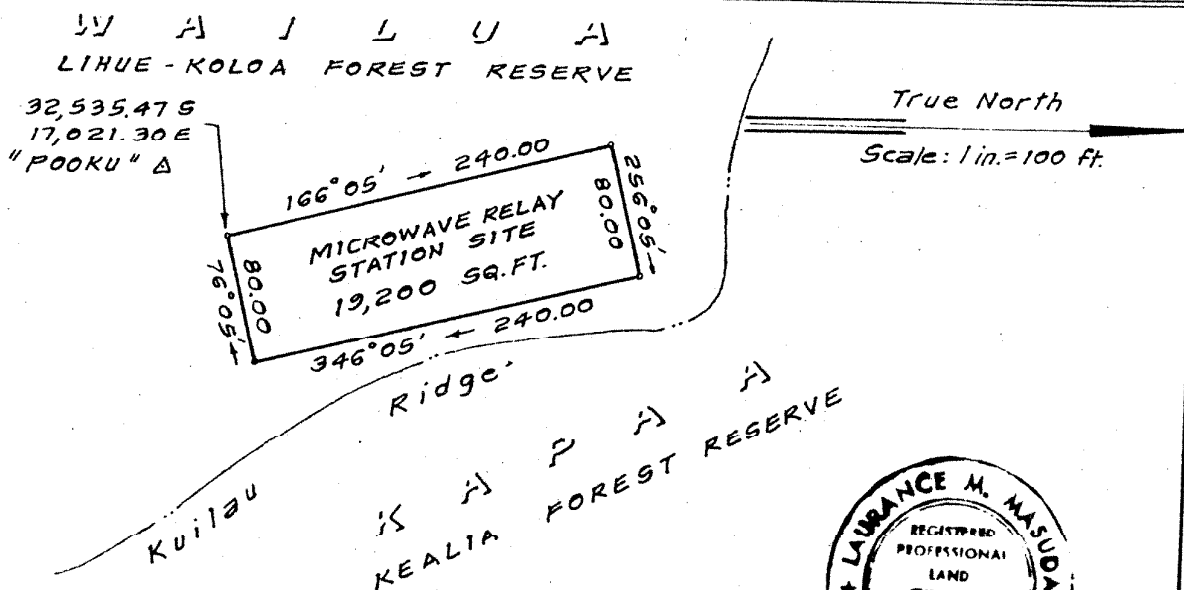
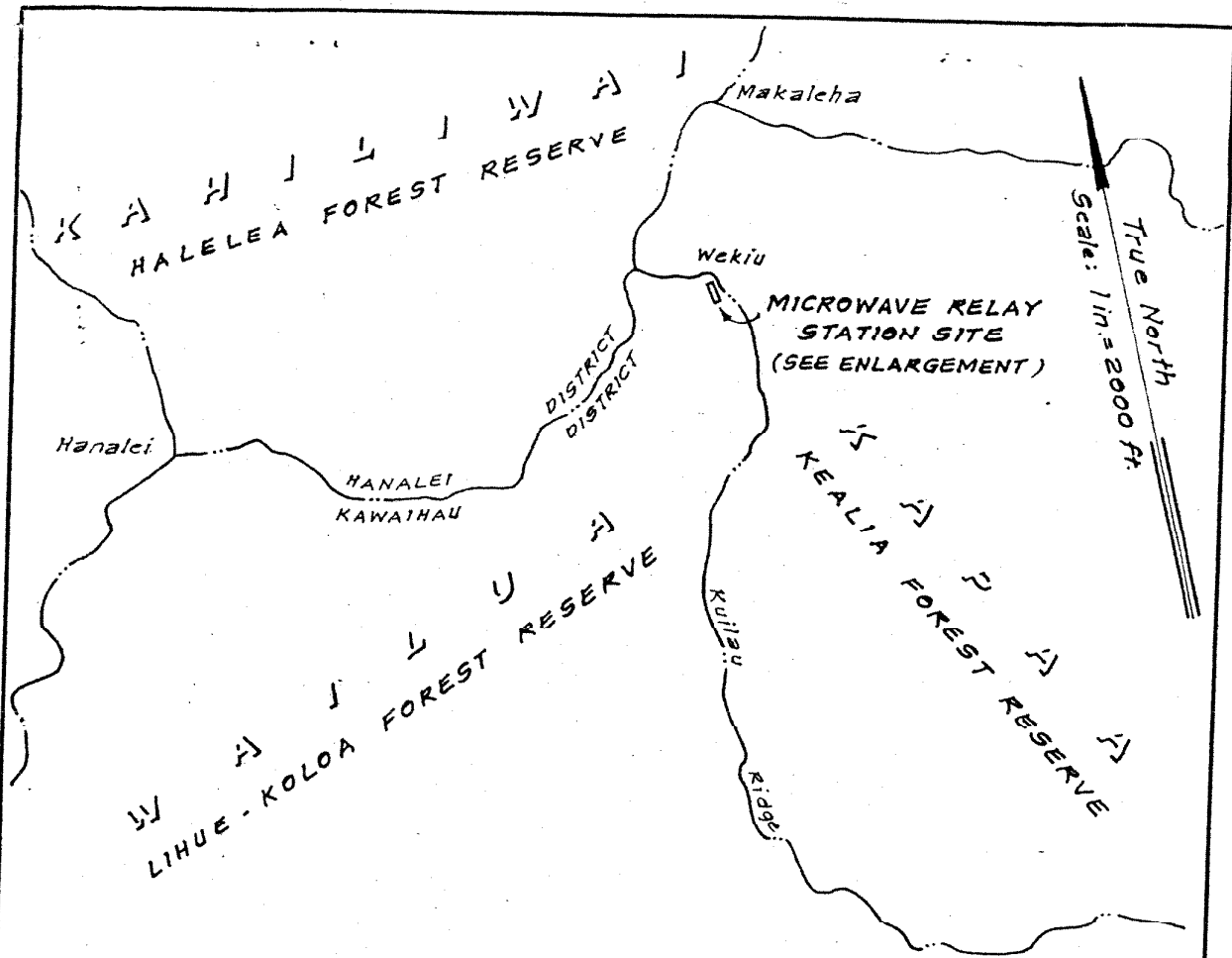
A handwritten signature in cursive script, appearing to read "Peter T. Young". The signature is written over a horizontal line.

Peter T. Young, Chairperson

*Pacific Ocean*



Location Map



**MICROWAVE RELAY  
STATION SITE**

WAILUA, KAWAIIHAW, KAUAI, HAWAII



This work was prepared by  
me or under my supervision.  
M & E PACIFIC, INC.

*Lawrence M. Masuda*

DRAFT  
July 14, 2006

Jack R. Hendrickson  
Mid Pacific Communications, Inc.  
3022 Peleke St., Suite One  
Lihue, HI 96766  
Tel. (808) 246-9334  
Cel. (808) 482-0639

Dear Mr. Hendrickson

Subject: Special Use Permit to Mid Pacific Communications, Inc. from July 14, 2006 until January 31, 2007; Mt. Wekiu, Kauai TMK (4) 4-2-001:Por 2.

We are in receipt of your request dated April 22, 2005, and routed through the Kauai Land Division office, requesting access to conduct a study related to the suitability of Mt. Wekiu peak as a prospective high capacity wireless data and telecommunications link site.

Based on our communications with you we will issue a Special Use Permit (SUP) to use only existing facilities now located at the Mt. Wekiu telecommunications site, TMK(4) 4-2-001: por. 2. We understand Mid Pacific Communications, Inc (MPC) will replace a corroded solar panel frame and an existing solar panel with a new frame and six (6) 175 watt solar panels. MPC will place dish and yagi antennas on the rooftop and/or sidewall of the existing communications shed and use the existing 14' diameter geodesic dome for solar battery and solar equipment storage. The largest dish antenna will be 4' in diameter and the smallest will be 2' in diameter. The longest yagi antenna will be 4' long with a width of 2.25". Current plans call for four (4) dish antennae to be installed. All will be painted dark green. MPC will install all radio, switching, and control equipment, as well as primary battery power, within the existing communications shed

MPC will remove old, non-operational, or un-permitted antennae from the communications shed and contact any owners of existing equipment that appears to be in use to propose that the owner(s) of such equipment contact DOFAW to discuss co-location at the site. MPC will use the existing helipad for site access, which will be regulated under a separate Forest Reserve Special Use Permit. MPC will transmit and receive high capacity Ethernet digital data and voice from Mt. Wekiu to locations on Kauai.

Therefore, pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of July 14, 2006 (Item C-?), MPC, is hereby granted a SUP to utilize a

portion of TMK (4) 4-2-001:Por 2, and consisting of approximately 19,200 square feet in the area shown on the attached map labeled Exhibit "A", subject to the following terms and conditions:

1. Entry shall be limited to daylight hours between 6:00 a.m. and 6:00 p.m.
2. The SUP shall be effective from July 14, 2006 to January 31, 2007.
3. Payment of \$ 750.00 rental fee per month, based on the appraisal done by the Land Division, dated March 24, 2006.
4. MPC, shall procure at its own expense, and maintain during the entire period of this Special Use Permit, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department (\$1,000,000 per incident/\$2,000,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall, cover the entire SUP area, including all improvements on or adjacent to the said SUP area in the control or use of MPC. MPC, shall furnish the Department with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve MPC, of its responsibility under this SUP as set forth herein or limit the amount of its liability under this Special Use Permit.
5. MPC shall pay DLNR a \$1500.00 deposit for restoration fees refundable upon completion or cancellation of the SUP and after a favorable site inspection by the Division of Forestry and Wildlife (DOFAW) on the basis that MPC is agreeable to condition No. 6 in this SUP as detailed below.
6. At all times herein, MPC, shall maintain and keep the right of entry area or premises in a neat, clean and sanitary condition. MPC, shall be responsible for cleaning and restoring the area to its original condition or a condition satisfactory to the Department of Land and Natural Resources upon completion or cancellation of the SUP. All trash and debris not pre-existing as of July 14, 2006 shall be removed from the area.
7. MPC, shall comply with all laws, rules and regulations of the Federal, State and County governments relative to the use of the subject area, including those relating to public health.
8. MPC, shall indemnify, defend and hold harmless the State of Hawaii, Department of



Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of MPC, under this approval or relating to or connected with the granting of this approval.

9. All equipment shall be placed on or within existing facilities within the designated area on the attached map labeled Exhibit "A".
10. This SUP does not grant the permittee exclusive access to the premises.
11. MPC, shall supply DOFAW a name and local telephone number of a contact person who can be reached at any time around the clock.
12. MPC, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. MPC, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the SUP area any such materials except to use in the ordinary course of business, and only after written notice is given to the State of the identity of such materials and upon issuance of the State's consent, the same of which may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by MPC and its consultants, contractors and/or persons acting for or on its behalf, then MPC and its consultants, contractors and/or persons acting for or on its behalf, shall be responsible for the cost thereof. In addition, MPC and its consultants, contractors and/or persons acting for or on its behalf, shall execute affidavits, representations and the like from time to time at the State's request concerning the best knowledge and belief of MPC and its consultants, contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the SUP area placed or released by MPC and its consultants, contractors and/or persons acting for or on its behalf.
13. MPC, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless from any damages and claims resulting from the release of hazardous materials on the SUP area occurring while MPC, its consultants, contractors and/or persons acting for or on its behalf are in possession, or elsewhere if caused by MPC, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this Right-of-Entry Permit.
14. For purposes of this SUP, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in the Resource

Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

15. MPC, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall use appropriate precautions and measures to minimize inconveniences to the State, landowners, and the public in general.
16. MPC, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall not store any personal belongings in the SUP area or premise during the effective period of this SUP.
17. All costs associated with the construction within the SUP area or premises shall be the sole responsibility of Mid Pacific Communications and its consultants, contractors and/or persons acting for or on its behalf.
18. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, MPC, and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this SUP shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
19. MPC and its consultants, contractors and/or persons acting for or on its behalf shall be responsible for obtaining all necessary federal, state or county clearances.
20. MPC and its consultants, contractors and/or persons acting for or on its behalf shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.
21. MPC and its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from MPC and its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the SUP area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the SUP area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at MPC and its consultants, contractors and/or persons acting for or on its behalf own cost and expense.

22. All disputes or questions arising under this SUP shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
23. This SUP is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson of the Board of Land and Natural Resources. As long as the revocation or termination is not as a result of any fault of, or default by MPC, of any provision of this SUP, then MPC, may apply for a refund of any advanced rental payment made based upon the percentage of use denied by the revocation or termination.
24. This SUP or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
25. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this SUP is in force.
26. This permit only covers the use of the site as described above. Any other uses or alteration of the site is not allowable without applying for a new permit.
27. The applicant will contact Alvin Kyono, Branch Manager, Kauai DOFAW office by telephone at 808-274-3433 within 24 hours before accessing the site by helicopter each time the site will be accessed. The names of the helicopter company and all persons planning to land at the Mt. Wekiu telecommunications site will also be provided.
28. Disturbance of vegetation and wildlife will be avoided as much as possible.
29. Precautions will be taken to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop, SUP is responsible for eradication by methods to be specified by DOFAW.

Should you agree to the above terms and conditions, kindly sign in the space provided below and submit the following to the Kauai DOFAW Office:

1. Copy of the signed acceptance below;
2. Payment of the \$750.00 rental fee and the \$1500 deposit for the permit area. (Checks should be made payable to the "Department of Land and Natural Resources" and mailed to Forestry Program Manager, Division of

Forestry and Wildlife, 1151 Punchbowl St., Room 325, Honolulu, HI  
96813.)

We have already received a copy of your Certificate of Liability Insurance that was submitted with your request. Should you have any questions, please contact Alvin Kyono of our DOFAW Kauai Office, at 274-3433.

Sincerely,

Peter T. Young  
Chairperson

ACCEPTED:

\_\_\_\_\_  
Mid Pacific Communications, Inc.

By Its: \_\_\_\_\_  
Date: \_\_\_\_\_, 2006

cc: Land Board Member  
OCCL  
Mr. Alvin Kyono, DOFAW  
Mr. Michael Constantinides, DOFAW